

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED
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2004 JUN 21 P 12:29

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

DIRECT MARKETING CONCEPTS, INC., et al.

Defendants.

U.S. DISTRICT COURT
DISTRICT OF MASS.

Civ. No. 04-CV-11136-GAO

**NOTICE OF FILING OF SUPPLEMENTAL MATERIALS IN SUPPORT OF
PLAINTIFF'S MOTION FOR A TEMPORARY RESTRAINING
ORDER/PRELIMINARY INJUNCTION**

Plaintiff Federal Trade Commission ("Commission" or "FTC") submits the attached Supplemental Declaration of Christina Turner in support of the Commission's motion for a temporary restraining order/preliminary injunction. The Declaration attaches videotapes (and transcriptions thereof) of two new, currently-airing infomercials that are directly linked to defendants Donald W. Barrett ("Barrett") and/or ITV Corporation ("ITV"). The Declaration also provides information about ITV's continuing questionable billing practices. The outrageous disease claims made in these infomercials are remarkably similar to the claims challenged in the Supreme Greens infomercial, and are further evidence of *ongoing harm* caused by Barrett and ITV. The FTC discovered the existence of these new shows this week through its routine monitoring of infomercials disseminated on cable television networks.¹ These supplementary materials strongly demonstrate the need for all of the relief sought by the Commission in the

¹ The Commission received the monthly Infomercial Monitoring Service report for May 2004 on June 7. Under the "New Shows" category, IMS reported that both infomercials discussed herein started airing in May 2004.

Preliminary Injunction it submitted to the Court on June 8, 2004, including an asset freeze and appointment of a receiver.

The first infomercial is for another dietary supplement with purported miraculous curative properties, "Stress Shield." The infomercial utilizes the same deceptive health-show format as the "Supreme Greens" infomercial: Barrett discussing the product with his guest, Kevin Thomas. The infomercial explains that stress causes serious illnesses and medical conditions (such as cancer, heart disease, depression and impotence) and that Stress Shield eliminates the effects that stress has on the body, thereby protecting the consumer from developing these illnesses. Additionally, as with Supreme Greens, the infomercial claims that this product can be used safely by children and people taking any medications. According to this infomercial, the primary ingredients in this product are "adaptagens," nutrients from Russian plants that survived after an asteroid or comet crashed into a "Siberian Rainforest" in 1908 by adapting to the "stress" they encountered.

In addition to these facially preposterous efficacy claims, ITV is still using questionable billing practices, as explained in the attached Declaration. The infomercial expressly states that "Stress Shield" is offered at a price of \$29.97. However, when an FTC investigator called to place an order on June 17, it was only after providing all of her personal information and agreeing to make the purchase that she was informed that the \$29.97 price was only for callers who signed up for the monthly autoship program; otherwise, the order would cost \$59.95. Defendants appear to be continuing to push their autoship program through deceptive practices akin to those originally challenged in our Complaint. In short, contrary to the representations made in Court on June 7 and in their numerous declarations, defendants continue to engage in

questionable billing practices, and a receiver is needed to bring an immediate halt to continued direct economic injury to consumers.

The second infomercial, for a product called the Seven Day Miracle Cleanse (“7DMC”) does not feature Barrett. However, the infomercial touts a website, www.7dmc.com, that in turn forwards consumers directly to ITV’s website and a FTC investigator has confirmed that orders placed through the infomercial are handled by ITV. The 7DMC infomercial makes similar outrageous disease-cure and prevention claims, stating that by using 7DMC, consumers can overcome serious illnesses and conditions, including AIDS, cancer, Alzheimer’s, diabetes, high blood pressure, migraines, fibroid tumors, bowel dysfunctions (including irritable bowel syndrome) and premenstrual syndrome. Additionally, the infomercial makes the impossible claim that with 7DMC, women will lose 10-25 pounds in seven days. The infomercial claims that 7DMC works by eliminating the toxic “mucous plaque” that lies within an individual’s colon.

The Commission submits that this new evidence shows that consumers are still being harmed by Barrett and ITV – through their unfair billing practices and dissemination of highly questionable infomercials. For these reasons and for additional reasons set forth in the Commission’s motion papers, the proposed Preliminary Injunction submitted by the Commission on June 8, 2004, which contains detailed findings of fact and conclusions of law, should be

entered by the Court.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Daniel Kaufman", is written over a horizontal line.

DANIEL KAUFMAN

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ATTORNEYS FOR PLAINTIFF

Dated June 18, 2004

CERTIFICATE OF SERVICE

My name is Daniel Kaufman and I am an attorney with Federal Trade Commission. On June 18, 2004, copies of Notice of Filing of Supplemental Materials in Support of Plaintiff's Motion for a Temporary Restraining Order/ Preliminary Injunction were served via FEDEX as follows:

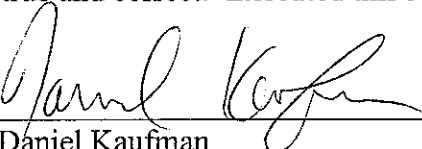
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Facsimile copies of the documents, minus exhibits, were transmitted on June 18, 2004. I declare under penalty of perjury that the foregoing is true and correct. Executed this June 18, 2004 at Washington, D.C.


Daniel Kaufman

² The Commission has communicated with the listed counsel in relation to the instant case. None of the counsel, however, has made an appearance in this matter, and the Commission is not certain who ultimately will represent the Defendants in this case.